

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

JOHN JOHNSON,

Plaintiff,

v.

NATIONWIDE EXPRESS, INC.,

Defendant.

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Case No. 3:12-00941

Judge Campbell

Magistrate Judge Knowles

DEFENDANT’S MOTION TO DISMISS

Comes now Defendant Nationwide Express, Inc. (“Nationwide”) and, pursuant to Federal Rule of Civil Procedure 12(b)(6), moves the Court to dismiss the Complaint. In support of its motion, Nationwide shows the Court the following:

1. Plaintiff’s state law claims should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff seeks to recover allegedly unpaid claims under an ERISA benefits plan. A copy of the insurance plan is attached as Exhibit B to Nationwide’s Notice of Removal (the “Plan”) (Docket No. 1-2). Plaintiff’s claims, however, are completely and/or expressly preempted by ERISA.

2. Not only are these claims preempted by ERISA, but Johnson has not, and cannot, plead that he has exhausted his administrative remedies provided in the Plan. Therefore, his efforts to recover his allegedly unpaid claim in this litigation must be dismissed.

3. Nationwide submits herewith a Memorandum of Law in support of its Motion to Dismiss.

s/ Andrew S. Naylor
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Mark M. Bell (Tenn. BPR #29048)
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion to Dismiss** was served via first class U.S. Mail upon:

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This the 10th day of October, 2012.

s/ Mark M. Bell